

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18333
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_____AD3d_____

Submitted - February 11, 2008

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
FRED T. SANTUCCI
JOHN M. LEVENTHAL, JJ.

2007-09707

DECISION & JUDGMENT

In the Matter of S & S Pub, Inc., d/b/a
Dublin Pub, appellant, v New York State
Liquor Authority, respondent.

(Index No. 9830/06)

Devane & Groder, LLP, Mineola, N.Y. (Mitchell Dranow of counsel), for appellant.

Thomas J. Donohue, New York, N.Y. (Scott A. Weiner of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the New York State Liquor Authority dated June 2, 2006, which adopted the recommendation of an Administrative Law Judge dated April 30, 2006, made after a hearing, sustaining charges that the petitioner had violated Alcoholic Beverage Control Law § 65(1), directed a 10-day suspension, and imposed a civil penalty in the sum of \$6,000.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

Upon judicial review of a determination rendered by an administrative body following a hearing, this Court's function is limited to consideration of whether the determination is supported by substantial evidence (*see Matter of Lahey v Kelly*, 71 NY2d 135, 140; *Matter of Alegre Deli v New York State Liq. Auth.*, 298 AD2d 581, 582). The term "substantial evidence" has been held to be a "minimal standard" (*Matter of FMC Corp. [Peroxygen Chems. Div.] v Unmack*, 92 NY2d 179, 188; *Matter of Café La China Corp. v New York State Liq. Auth.*, 43 AD3d 280, 280). Hearsay

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MATTER OF S & S PUB, INC., d/b/a DUBLIN PUB v
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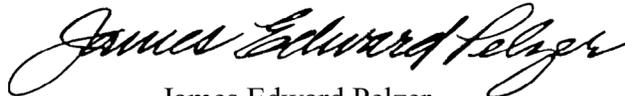
evidence is admissible in administrative proceedings, and may, if sufficiently relevant and probative, constitute substantial evidence (*see People ex rel. Vega v Smith*, 66 NY2d 130, 139; *Matter of Abdelrahman v New York State Liq. Auth.*, 209 AD2d 405, 406). Moreover, under appropriate circumstances, hearsay evidence may form the sole basis for an agency's ultimate determination (*see Matter of Gray v Adduci*, 73 NY2d 741, 742-743; *Matter of Ridge, Inc. v New York State Liq. Auth.*, 257 AD2d 625, 626; *Matter of A.J. & Taylor Rest. v New York State Liq. Auth.*, 214 AD2d 727).

The determination of the respondent New York State Liquor Authority sustaining charges that the petitioner violated Alcoholic Beverage Control Law § 65 (1), which prohibits the sale of alcoholic beverages to persons under the age of 21, is supported by substantial evidence (*see Matter of 294 Grand Ave. Grocery Corp. v New York State Liq. Auth.*, 12 AD3d 521; *Matter of Oneonta Water St. v New York State Liq. Auth.*, 279 AD2d 849, 850; *Matter of Sue's Rendezvous of Westchester v New York State Liq. Auth.*, 177 AD2d 273; *cf. Matter of Vitagliano v State of New York Liq. Auth.*, 174 AD2d 624).

Additionally, the penalty imposed is not so disproportionate to the offense as to be shocking to one's sense of fairness (*see Matter of Cantina El Bukis Corp. v New York State Liq. Auth.*, 46 AD3d 557, 558; *Matter of Oneonta Water St. v New York State Liq. Auth.*, 279 AD2d at 851; *Matter of Ira Wyman, Inc. v New York State Liq. Auth.*, 170 AD2d 991).

RIVERA, J.P., SKELOS, SANTUCCI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court